HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL NO.954 OF 2006

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Between:
M.Basanth Reddy.

..... Appellant

AND

The Special Deputy Collector,
Land Acquisition (Industries), Hyderabad.
and six others.

.....Respondents

::JUDGMENT::

Counsel for the Appellant : Sri.M.Ganga Rao

Dated 18/9/2006

Per Sri G.S.Singhvi, CJ

Having failed to persuade the learned single Judge to quash memo dated 05-09-2006 issued by Special Deputy Collector, Land Acquisition (Industries), Hyderabad, declining his prayer to release certain extents of land comprised in Survey Nos.220 and 221 of Kapra village, Keesara Mandal, Ranga Reddy district, the appellant has filed this appeal under Clause 15 of the Letters Patent.

Although the averments contained in the affidavit filed in support of the writ petition and documents annexed with it do not give a clear picture of the steps taken by the Government for acquisition of land comprised in Survey Nos.220 and 221 situated in Kapra Village of Keesara Mandal, Ranga Reddy District, from the
half-baked pleadings of the appellant and documents produced by him, it can be inferred that some of the persons, whose land had been acquired for Nuclear Fuel Complex, filed civil suit, obtained injunction and then colluded with the governmental authorities for securing the release of their share of land vide G.O.Ms.No.375 Ind. & Com. (INF) Deptt. dated 07-09-2002 issued under
Section 48(1) of the Land Acquisition Act, 1894.

As was expected, the decision of the Government to release a portion of the acquired land generated further litigation. Sri Bhaskar Reddy filed Writ Petition No.24641 of 2005 for issue of a mandamus to the respondents to release the land measuring Ac.11.03 guntas comprised in Survey No.220 and Ac.8.31 guntas comprised in Survey No.221 (total land measuring Ac.19.34 guntas) situated at Kapra

Village, Keesara Mandal, Ranga Reddy District, and the same was dismissed by the learned Single Judge vide his order dated 21-11-2005.

The learned Single Judge relied on the judgments of this Court in **Koppula Narasaiah v. Government of Andhra Pradesh**[1] and of the Supreme Court in **Northern Indian Glass Industries v. Jaswant Singh**[2] and **Government of Andhra Pradesh v. Sued Akbar**[3] and held that the acquired land cannot be reconveyed to the owners merely because the same has not been utilized. For the sake of reference, the order passed by the learned Single Judge is reproduced below:

" The petitioner claims that his family owned huge extent of land in S.Nos.220 and 221 admeasuring about Acs.20 in Kapra village. The land was acquired for Nuclear Fuel Complex (NFC) about four decades ago and petitioner received compensation for the land as enhanced by the Civil Court in a reference under Section 18 of the Land Acquisition Act, 1894 (for short, the Act). It appears, one Smt. M.Shyamala and sons occupied a part of the land belonging to NFC, which was not utilized by them. They also filed a suit for declaration of title. At that stage, according to the petitioner, the Government compromised the matter and withdrew the notification acquiring the land, which was in possession of M.Shyamala and others by issuing orders in G.O.Ms.No.375, dt. 7-9-2002 and collected the marked value from M.Shyamala and others. Seeking similar relief the petitioner made a representation in February, 2003 and September, 2003. These applications were rejected. Assailing the same, the petitioner filed the present writ petition, in effect, seeking an order directing the respondents to re-convey the land acquired in 1967.

It has been repeatedly held by this Court and the Supreme Court that un-utilized land acquired under the proceedings of the Act cannot be re-conveyed to the owners. It is also well-settled that un-utilized land can be used for public purpose and in case the Government does not want to keep the land, the

same has to be disposed of by conducting public auction {(See *Koppula Narasaiah v. Government of Andhra Pradesh (1 supra), Northern Indian Glass Industries v. Jaswant Singh (2 supra) and Government of Andhra Pradesh v. Syed Akbar (3 supra)*}

Following the same, the writ petition is dismissed as the petitioner has no right to seek Writ of Mandamus."

W.A.No.2335 of 2005 filed by Sri M.Bhaskar Reddy against the order of the learned Single Judge was dismissed by the Division Bench, of which, one of us (the Chief Justice) was a member, vide its order dated 29-11-2005. Undeterred by reversals at two stages of the legal proceedings, Sri M.Bhaskar Reddy approached the Supreme Court and filed petition for Special Leave to Appeal (Civil) No.1470 of 2006, which was dismissed on
27-01-2006.

After eight and half months, the appellant filed Writ Petition No.18864 of 2006 for grant of relief in identical terms by seeking a direction for reconveyance of Ac.19.34 guntas of land in Survey Nos.220 and 221 situated in Kapra Village, Keesara Mandal. The learned Single Judge dismissed the writ petition by observing that the plea of discrimination raised by him has remained unsubstantiated. The learned Single Judge held that the reasons assigned by the Special Deputy Collector for refusing to release the land are legally correct and there was no legal basis for the appellant's claim for re-conveyance of the land.

Sri Ranga Rao, learned counsel for the appellant argued that the order under challenge is liable to be set aside because the learned Single Judge has not assigned any reason as to why benefit similar to the one contained in G.O.Ms.No.375 dated 7.9.2002 should not be

extended to the appellant.

In the context of the submission made by the learned counsel, we asked Sri Rao to indicate the nature and extent of his client's share in Survey Nos.220 and 221 and his right to seek reconveyance of the land despite the fact that identical prayer made by Sri M.Bhaskar Reddy was turned down by the Single Bench and the Division Bench of this Court and the petition for Special Leave to Appeal was dismissed by the Supreme Court. The learned counsel responded to the query of the Court by saying that the representation made by his client was not rejected on the ground of inadequacy of evidence regarding his share in the land in question, and therefore, the court need not go into that issue.

We have not felt convinced with the argument of the learned counsel that even after dismissal of the writ petition and appeal filed by Sri M.Bhaskar Reddy, who had claimed re-conveyance of Ac.19-34 guntas comprised in Survey Nos.220 and 221, the present appellant is entitled to resurrect the same claim on the pretext that he was not party to the earlier litigation. Undisputedly, the subject matter of the writ petition filed by

Sri M.Bhaskar Reddy and the one filed by the appellant is one and the same. Therefore, the adjudication of the claim made by Sri M.Bhaskar Reddy would certainly operate as a bar to the maintainability of the writ petition filed by the appellant. Even though the provisions of Section 11 of the Code of Civil Procedure do not, in terms, apply to the proceedings under

Article 226 of the Constitution, the policy underlying the said doctrine can certainly be applied while adjudicating petition filed under Article 226 of the Constitution of India (see **Sarguja Transport Service v.**

State Transport Appellate Tribunal, Gwalior).[4]

The plea of discrimination of the appellant is also liable to be negatived because he did not produce any evidence before the learned Single Judge to show that his case is similar to that of Shri M.Ram Reddy, who continued to be in possession of the land and had also filed suit claiming prescriptive title on the ground of continued occupation. The possession of the land owned by the appellant was taken over in the year 1966-67 after paying compensation. With that, his pre-existing rights to title etcetera stood automatically extinguished and the land vested in Nuclear Fuel Complex. Therefore, he cannot get the benefit of G.O.Ms.No.375 dated 07-09-2002, which, as mentioned above, appeared to be the result of manipulative exercise undertaken by Shri M.Ram Reddy.

For the reasons mentioned above, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2009 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY,J

18.9.2006

msv/bsc

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[1] 2000(6) ALD 2999

[2] (2003) 1 SCC 335

[3] (2005)1 SCC 558

[4] AIR 1987 SC 88